



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

**Reportable / Not
reportable**

Case no: **4379/2024**

In the matter between:

CLARENS RATEPAYERS ASSOCIATION

Applicant

[Registration number: **NPO2022/693765/08**]

and

DIHLABENG LOCAL MUNICIPALITY

First Respondent

**MUNICIPAL MANAGER: DIHLABENG
LOCAL MUNICIPALITY**

Second Respondent

THE MINISTER OF WATER AND SANITATION

Third Respondent

**THE MEMBER OF THE EXECUTIVE COUNCIL:
FREE STATE CO-OPERATIVE GOVERNANCE
& TRADITIONAL AFFAIRS**

Fourth Respondent

Neutral citation: XXX

Coram: Cronjé, AJ

Heard: 02 September 2024

Delivered: 03 September 2024

Summary: Urgent application – condonation – periods severely abridged – relief does not justify urgent hearing - application to enroll the matter on an urgent basis dismissed - balancing interests, rights and responsibilities of the respective parties - fair and in the interest of justice that each party pays its own costs.

ORDER

1. The application to enroll the matter on an urgent basis is dismissed.
 2. Each party pays its own costs.
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JUDGMENT

Cronje AJ

Introduction:

[1] The applicant brought an urgent application, issued on 6 August 2024, and served on the first and second respondents (the respondents) on 7 August 2024. The application was set down for hearing for 22 August 2024 and postponed to 2 September 2024.

[2] The respondents were informed that should they intend to oppose the application, they should file their notice of intention to oppose on or before 14 August 2024 and an answering affidavit, if any, on or before 21 August 2024. It is common cause that the respondents were only granted five days instead of ten days to oppose and only five days to file an answering affidavit. The Uniform Rules provide that a respondent, unless the applicant makes out a case for urgency, is entitled to file a notice of intention to oppose within ten days of service of the application and, after that, file an answering affidavit within 15 days.

[3] In para 21 of the founding affidavit it is stated that the applicant's purpose with the application is to vindicate its members and the residents' constitutional right to have access to sufficient water by compelling the respondents to inform it, and to keep it informed, of all steps the respondents intend to take to ensure that the water supply will not be interrupted from 1 October 2024.

[4] In paras 97-99 of the founding affidavit, the applicant, in addressing urgency, states that the matter needs the urgent attention of the court, or else any redress might be of no value at all. It states two months are left before the shutdown of the water supply occurs.

[5] Paragraph 98 states that the respondents cannot be prejudiced by the shorter timeframes as it was their duty to comply with the prayers that the applicant seeks. It states that it did not create urgency, and its right to information is continuously infringed.

[6] The respondents state that they are extremely prejudiced by the abridged timeframes, given the many facts that must be traversed. The background facts have to be investigated and consultations need to be held with the relevant interested parties. Should the court be inclined to rule that the application is urgent, the respondents reserve their right to request an opportunity to supplement their answering affidavit.

[7] They state that the applicant failed to set out the circumstances that justified a deviation from the normal periods. They argue that there is no intervening *causa*. The applicant should have approached the court when it believed its rights were infringed. They argue that the applicant threatened to approach the court on numerous occasions for redress on an urgent basis, yet never did so, and argue furthermore that the applicant already knew in August 2023 that the tunnel would be shut down for maintenance.

[8] On 19 February 2024, the applicant's attorney addressed a letter to the municipal manager placing it on record that it is the final request for a meeting to discuss possible solutions to the pending water crisis.

[9] The respondents give an overview of occurrences that took place from that date until the application was issued.

[10] During the argument, Mr Blom stated that prayer 4 hinges on prayer 3, which has now been complied with. Prayer 3 reads:

'That the first and second respondents be ordered to file reports, by affidavit, with the registrar of this court, within 10 (TEN) days of this order, containing:

3.1 The relevant steps they are taking and/or intend to take to ensure that the supply of water to the town of Clarens will not be interrupted and/or terminated and/or unreasonably reduced

from 1 October 2024 by the closure of the Lesotho Highlands tunnel;

3.2 The intended steps taken by them to drill and equip boreholes to augment the water supply from the Little Caledon river and/or Townlands dam;

3.3 The intended steps taken by them to extract water from the Townlands dam;

3.4 The First Respondent's intended work program, with timelines, and approved budget or allocated budget pertaining to the steps referred to in prayers 2 and 3.1 through 3.3;

[11] Prayer 4 reads:

'That the Applicant be authorized to employ an expert to consider the reports filed in terms of prayer 3, to monitor the works that may be contemplated in terms thereof and to compile a comprehensive report to be filed with the Registrar of this Court, with the First Respondent being liable to pay all such reasonable costs of the said expert. To the extent that costs are disputed, the Taxing Master is to be approached for resolution thereof;'

[12] It is apparent from prayer 4 that only monitoring the works that '*may be contemplated*' is of concern at this point. Bearing in mind that no reliance is placed on prayers 2 and 3 for urgency, I believe that the relief in prayer 4 does not justify entertaining the application on an urgent basis.

COSTS:

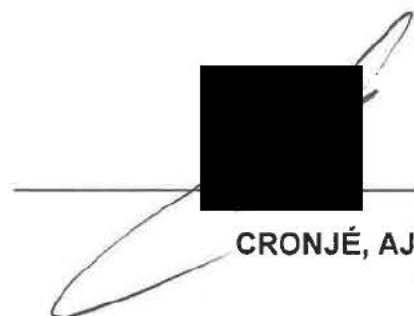
[13] The record presently comprises 401 pages. The applicant seeks an indulgence to deliver further affidavits. The respondents submit that they are prejudiced in that they could not deal with all the averments within the short time allowed.

[14] It can only be hoped that the parties will find a mechanism to close the impasse between the interests they serve, which appear to be the same. Balancing the interests, rights and responsibilities of the respective parties, I deem it fair and in the interest of justice that each party pays its own costs.

ORDER:

[15] Wherefore I make the following order:

1. The application to enroll the matter on an urgent basis is dismissed.
2. Each party pays its own costs



CRONJÉ, AJ

Appearances:

For the Applicant:

Mr. J Bloem

Instructed by:

UFS Law Clinic
Bloemfontein

For the Respondent:

Adv. M C Louw

Instructed by:

Peyper Attorneys
Bloemfontein